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13 **UNITED STATES DISTRICT COURT**

14 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

15 ELLIOT NAZOS, *et al.*, individually
16 and on behalf of all others similarly
situated,

17 Plaintiffs,

18 v.

19 TOYOTA MOTOR SALES, U.S.A.,
20 INC.,

21 Defendant.

22 Case No. 2:22-cv-02214-PA(Ex)

23 **[PROPOSED] STIPULATED
PROTOCOL FOR PRODUCING
DOCUMENTS AND ESI**

24 Assigned to: Hon. Percy Anderson

1 This Stipulated Protocol for Producing Documents and ESI (The “ESI
2 Protocol”) shall govern the production of documents and electronically stored
3 information (“ESI”) by the Plaintiffs and Defendant (each individually a “Party” or
4 collectively “Parties”), in the above captioned litigation.

5 **A. Definitions**

6 1. “Confidentiality Designation” means the legend affixed to documents or ESI
7 for confidential or highly confidential information as permitted by, and subject to, the
8 terms of the Protective Order agreed to by the Parties and/or entered by the Court in
9 this litigation.

10 2. “Document” is defined by Federal Rules of Civil Procedure 26 and 34.

11 3. “Electronically stored information” or “ESI” is defined by Federal Rules of
12 Civil Procedure 26 and 34.

13 4. “Hard-Copy Document” means Documents existing in paper form at the time
14 of collection, even if collection happened at a date prior to collection for this
15 litigation.

16 5. “Hash Value” means the unique numerical identifier assigned to a file, a group
17 of files, or a portion of a file, based on the standard mathematical algorithms MD5,
18 SHA-1, or SHA256, applied to the characteristics of the data set.

19 6. “Native Format” means an electronic document’s associated file structure
20 created by the original creating application. For example, the native format of an
21 Excel workbook is a .xls or .xlsx file.

22 7. “Metadata” means information embedded in or associated with a native file
23 that describes the characteristics, origins, usage, and/or validity of the electronic file.

24 8. “Producing Party” means any Party or non-party that produces Documents or
25 ESI pursuant to this ESI Protocol.

26 9. “Receiving Party” means any Party or non-party that receives Documents or
27 ESI produced in this litigation.

1 10. “Searchable Text” means the native text extracted from ESI and any Optical
2 Character Recognition text (“OCR text”) generated from a Hard-Copy Document or
3 electronic image.

4 **B. Search**

5 1. Search Terms. A Producing Party that elects to run search terms, whether in
6 English or in a foreign language, shall provide to the Receiving Party a list of search
7 terms the Producing Party proposes to be used.¹ Following receipt of such search
8 terms, the Receiving Party will identify in writing, within 7 days, any additional
9 terms or proposed changes to the proposed search terms. Within 14 days of receipt,
10 the Producing Party will identify all terms proposed by the Requesting Party that it
11 objects to using (“Disputed Search Terms”) and will provide information sufficient to
12 establish the basis for its objection to each Disputed Search Term. Within 7 days of
13 receipt of the list of Disputed Terms, the Parties will meet and confer in a good faith
14 attempt to reach a final list of mutually agreeable search terms (the “Agreed Search
15 Terms”).

16 2. Foreign Language Search Terms. The Producing Party shall take reasonable
17 steps to confirm if a custodian or noncustodial data source(s) that is to be subjected to
18 search terms to identify potentially relevant documents will need to be searched in
19 any language other than English. To the extent the Producing Party uses search terms
20 on a given dataset, the Producing Party will run searches using English language
21 terms and the foreign language terms, as appropriate.

22 **C. Technology Assisted Review**

23 Any Producing Party that intends to use Technology Assisted Review (“TAR”) to
24 (a) determine the relevance or non-relevance of documents for production purposes,
25 and/or (b) cull a set of documents that will thereafter be reviewed by humans to

26 ¹ The Producing Party agrees to consider a Receiving Party’s request for additional
27 custodians, and to meet and confer with the Receiving Party in a good faith attempt to
28 reach agreement regarding the Receiving Party’s request.

1 determine relevance or non-relevance for production purposes, shall disclose such
2 intent to use TAR to the Receiving Party in advance of its use so the Parties may
3 meet and confer regarding such TAR review. The parties will meet and confer within
4 7 days of such disclosure. Any remaining disputes must be brought to the Court
5 pursuant to L.R. 37-2 within 14 days of the meet and confer.

6 **D. Hard-Copy Documents**

7 Documents that exist only in Hard-Copy format may be produced by the
8 Producing Party in Hard-Copy format. To the extent the Producing Party elects to
9 produce Hard-Copy format documents electronically, such Hard-Copy documents
10 will be scanned or otherwise converted into electronic form in the following format:

11 1. TIFFs. All documents shall be scanned to single page Group 4, TIFF format,
12 at least 300 dpi and 8 ½ x 11 inch page size, except for documents requiring higher
13 resolution or different page size. Each image file should have a unique file name
14 which shall be the Bates number of the page. Each image shall be branded with a
15 Bates number and confidentiality designation. Reasonable efforts shall be made so
16 TIFFs show all text and images that would be visible to a user of the Hard-Copy
17 Documents.

18 2. Unitization of Paper Documents. In scanning Hard-Copy Documents, distinct
19 documents should be logically unitized for production. Therefore, when scanning or
20 producing Hard-Copy Documents, documents should be scanned as they are
21 maintained. Distinct documents should not be merged into a single record, and single
22 documents should not be split into multiple records. For documents found in folders
23 or other containers with labels, tabs, or other identifying information, such labels and
24 tabs shall be scanned where practicable. Pages with Post-it notes shall be scanned
25 both with and without the Post-it.

26 3. File/Binder Structures (Parent-Child Unitization). Where multiple documents
27 were organized into groups, such as folders, clipped bundles and binders, each

1 distinct document shall be unitized, but maintained together in a parent-child
2 relationship, where practicable.

3 4. Load Files. Productions of the images shall be made using an image load file
4 (.OPT or .LFP) and a delimited database/metadata load file (.DAT). Each image file
5 should have a unique file name which shall be the Bates number of the page.

6 5. Objective Coding Fields. The following objective coding fields should be
7 provided, if applicable: (1) beginning Bates number; (2) ending Bates number; (3)
8 beginning attachment Bates number; (4) ending attachment Bates number; (5) page
9 count; and (6) source location/custodian.

10 6. OCR Text Files. The document level OCR should be provided as a separate
11 text file. The file name of each text file should correspond to the file name of the
12 first image file of the document with which it is associated. The text files will not
13 contain the redacted portions of the documents. OCR software should be set to the
14 highest quality setting during processing. For documents in foreign languages, the
15 OCR shall be performed using an OCR tool and settings suitable for the particular
16 byte or multi-byte languages.

17 **E. Electronically Stored Information**

18 The Parties will produce ESI in TIFF format according to the following
19 specifications:

20 1. All TIFF formatted documents will be single page, Group 4 TIFF at 300 x 300
21 dpi resolution and 8½ x 11-inch page size, except for documents requiring different
22 resolution or page size.

23 2. An image load file, in standard Opticon format, showing the Bates number of
24 each page and the appropriate unitization of the documents, will accompany all
25 document images.

26 3. Each imaged version of an electronic document will be created directly from
27 the original electronic document.

1 4. TIFFs shall be produced as black & white, single-page TIFF images in
2 accordance with the technical specifications set out above, unless agreed by the
3 Producing Party or ordered by the Court. Where possible, word documents that have
4 tracked changes or comments shall be imaged and produced in color and with margin
5 comments visible in the image. Reasonable requests for the production of documents
6 in color shall not be unreasonably refused. Documents produced in color shall be
7 produced as single page, 300 DPI, color JPG images with the quality setting of 75%
8 or higher. In the event that a TIFF file is objectively illegible or difficult to read, the
9 parties agree to meet and confer in an attempt to identify a reasonable solution.

10 5. All TIFF files are to be provided with an accompanying searchable text (.TXT)
11 file. Where possible, such TXT file should be extracted from the native, electronic
12 file (not generated as an OCR file from the TIFF image(s)), and such text files shall
13 contain the full text extraction. To the extent reasonably feasible, extracted text shall
14 provide all tracked changes (comments, deletions, and revision marks, including the
15 identity of the person making the deletion, revision, or comment, and the date and
16 time thereof), speaker's notes, and text from hidden worksheets, slides, columns and
17 rows. In the case of files with redacted text, OCR'ed text of the redacted documents
18 may be provided in lieu of extracted text. OCR software should be set to the highest
19 quality setting during processing. For documents in foreign languages, the OCR shall
20 be performed using an OCR tool and settings suitable for the particular byte or multi-
21 byte languages. Each text file shall be named according to the Bates number of the
22 first page of the corresponding image files (e.g., BATES000001.TXT).

23 6. Each of the metadata and coding fields set forth below that can be extracted
24 shall be produced for each document. The Parties are not obligated to populate
25 manually any of the fields below if such fields cannot be extracted from a document,
26 with the exception of the following: BEGBATES, ENDBATES, BEGATTACH,
27 ENDATTACH, and CUSTODIAN. The metadata file shall be delimited according to
28 the following characters:

- 1 • Delimiter = ¶ (ASCII:020)
- 2 • Text-Qualifier = ¢ (ASCII:254)
- 3 • New Line = ® (ASCII:174)
- 4 • Multi-value delimiter = ; (ASCII Code 059)

Field Name	Field Description	Example/Format
Custodian	Name of custodian(s) of email(s) or file(s) produced (Last Name, First Name format) as available	Smith, Joe
Duplicate Custodian (for global deduplication)	Name of duplicate custodian(s) of email(s) or files produced.	Smith, Joe; Smith, Jane
BegBates	The Bates Number of the first page of the document (including Prefix)	ABC00000001
EndBates	The Bates Number of the last page of the document (including Prefix)	ABC00000003
BegAttach	Beginning Bates Number of the first page of the first document in a document family range (only in emails with attachments)	ABC00000001
EndAttach	Ending Bates Number of the last page of the last document in the document family range (only in emails with attachments)	ABC00000008
Volume	The name of the CD or Hard Drive for ESI, or collection, binder, cabinet for hard copy docs (i.e., the volume ID).	VOL001

	Field Name	Field Description	Example/Format
1	From	From field extracted from an email message	Joe Smith <joesmith@email.com>
2	Author	Author field extracted from the metadata of a non-email document	Smith, Joe
3	To	To or Recipient extracted from an email message	Jane Smith <janesmith@email.com>
4	Cc	Carbon Copy (“Cc”) field extracted from an email message	John Smith <johnsmith@email.com>
5	Bcc	Blind Carbon Copy (“Bcc”) field extracted from an email message	Mary Smith <marysmith@email.com>
6	EmailSubject	Subject line extracted from an email message	
7	Attachment	The file name(s) of documents attached to an email. Separated by a semicolon.	
8	Email Attachment Count	The number of attachments to a parent.	Numeric
9	Filename	File name — Original name of file as appeared in original location	
10	File Author	The author of a document from extracted metadata.	Smith, John
11	Title	Title field extracted from the metadata of a non-email document	
12	DateSent	Sent date and time of an email message (mm/dd/yyyy hh:mm:ss format) (a given	mm/dd/yyyy hh:mm:ss

1	Field Name	Field Description	Example/Format
2		email will have either a DateSent or Date Recvd, but not both)	
3	DateRcvd	Received date and time of an email message (mm/dd/yyyy format) (a given email will have either a DateSent or Date Recvd, but not both)	mm/dd/yyyy hh:mm:ss
4	DateCreated	Date that a non-email file was created (mm/dd/yyyy format)	mm/dd/yyyy
5	DateLastModified	The application recorded time on which the document was last modified	mm/dd/yyyy
6	Email Importance	Email Importance Flag	Normal, Low, High
7	TimeZone Processed	The time zone shall be UTC for all documents.	UTC
8	FileType	The type of document	Email, hard copy, loose efile.
9	FilePath	File path storage location of the document or email if the source application allows for the creation of folders	
10	File Manager/ Application Description	Native file application.	Microsoft Excel, Word, etc.
11	File Extension	The file extension of the document.	Xls
12	File Last Author	The name of the last individual to save the file.	Smith, John
13	Date Appointment Start	Date of calendar appointment entry.	MM/DD/YYYY hh:mm:ss

	Field Name	Field Description	Example/Format
1	Date Appointment End	End date of calendar appointment entry.	MM/DD/YYYY hh:mm:ss
2	PgCount	The number of pages of the document, excluding the pages of documents in the same family	Numeric
3	FileSize	The file size of a document (including embedded attachments).	
4	Hidden Data	Whether hidden data exists in the doc. For example, hidden Excel cells or PowerPoint slides.	Y, N, Blank
5	Duplicate FilePath	Folder locations of documents held by other custodians whose copy of the document was not produced based on exact match HASH value deduplication. Folder names shall be delimited by semicolons and include originating custodian name.	
6	NativeLink (if natives are exchanged)	The relative path to any files produced in native format	D:\NATIVES\ ABC00000005.xls
7	TextLink (if text is exchanged)	Relative path to any OCR/extracted text files in the production set. .	D:\TEXT\ ABC00000001.txt
8	HashCode	MD5 or SHA-1 hash value used to deduplicate the data	
9	Confidentiality Designation	Confidentiality Designation assigned to the document by counsel for the Producing Party	Confidential, Highly Confidential

1	Field Name	Field Description	Example/Format
2	RedactionField	When document contains redactions, field will be populated “Y”	Y
3	RedactionBasis	The basis for any redaction in the document.	
4	Translated	Indicates whether the document has been translated from a foreign language.	Yes

5
6 ESI items shall be processed in a manner that preserves the source native file and all
7 of the above-referenced metadata without modification consistent with the
8 requirements provided in this ESI Protocol.

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11 7. Bates Numbers. Every item or file of ESI that is produced shall be identified
12 by a unique page identifier (“Bates Number”) and a Production Volume containing
13 such files. All Bates Numbers will consist of an Alpha Prefix, followed by a numeric
14 page index. There must be no spaces in any Bates Number. Any numbers with less
15 than 8 digits will be front padded with zeroes to reach the required 8 digits. All ESI
16 produced in TIFF shall contain a unique Bates Number on each page of the
17 document, electronically “burned” onto the image at a location that does not conceal
18 or interfere with any information from the source document, where possible. The
19 Parties shall meet and confer to attempt to resolve any issues with documents or ESI
20 that cannot be technically processed (e.g., unsupported file formats, file corruptions,
21 inaccessible password-protected files). If a member of a document family that has
22 otherwise been determined to include a responsive document cannot be technically
23 processed, those technical problems shall be identified and disclosed to the Receiving
24 Party by production of a Bates-labeled slipsheet identifying the technical problem.

25
26 8. Parent-ChildRelationships. Parent-child relationships within a document
27 family (the association between an attachment and its parent document or between
28 embedded documents and their parent) shall be preserved. Non-privileged

1 attachments to an e-mail or embedded files or links, and Hard Copy Documents
2 attached or appended to Hard Copy Documents, must be mapped to their parent by
3 the beginning Bates Number and immediately follow that parent file in the sequence
4 of the production. E-mail attachments and embedded files or links must contain
5 “BEGATTACH” and “ENDATTACH” fields listing the unique beginning Bates
6 Number of the parent documents and ending number of the last attachment must be
7 populated for each child and parent document. Absent a claim of privilege,
8 responsive family members will be produced consecutively with the responsive
9 related parent e-mail.

10 9. Native Format Production Documents.

- 11 a. The Parties will produce the following ESI types in native file format:
12 Excel spreadsheets, Audio/video files, and Animations.
- 13 b. Any document produced in native format will be produced according to
14 the following specifications:
 - 15 i. A Bates number and confidentiality designation shall be used as
16 the file name and the original file name and file extension shall be
17 preserved in the corresponding load file.
 - 18 ii. Any file produced in native format need not be imaged. Instead, a
19 single page placeholder image shall be provided that indicates the
20 file was produced in native format and contains the Bates number
21 of the corresponding file.
- 22 c. Production Of Structured Data: Where a discovery request requires
23 production of structured data and upon a reasonable request by the
24 Receiving Party, the Parties shall meet and confer regarding appropriate
25 format of production.
- 26 d. For each document produced in Native Format, a Producing Party shall
27 also produce a corresponding cover page in TIFF, specifying that the
28 document has been “produced in native format” and endorsed with the

1 Bates Number and Confidentiality Designation, if any, which will be
2 inserted into the image population in place of the native file.

3 10. Embedded Objects. Embedded files to responsive documents need not be
4 produced as separate documents. Examples of Embedded files include, but are not
5 limited to, logo graphics in email signature lines (usually *.PNG or another image
6 file format) and images, tables, or graphics in presentation software like Microsoft
7 PowerPoint.

8 11. Deviation from Production Specifications. If a particular document or category
9 of documents would be burdensome to produce in the format specified herein, the
10 Producing Party shall promptly raise the issue to the Receiving Party. Upon
11 reasonable request made by the Receiving Party, the Parties shall confer regarding
12 producing the document or category of documents in an alternate format.

13 12. Use at Deposition. Any document produced in Native Format that a Party
14 identifies and/or marks as an exhibit at a deposition must include as part of that
15 identification or exhibit the produced corresponding TIFF cover page, if available,
16 endorsed with the document's Bates Number and Confidentiality Designation.

17 13. Hyperlinks. Where responsive documents and ESI contain responsive
18 hyperlinked documents, the parties will meet and confer to find a mutually acceptable
19 solution for identifying the hyperlinked document.

20 14. Communication Applications and Ephemeral Messaging: The parties agree to
21 meet and confer regarding the parameters governing the search and collection of such
22 data.

23 **F. Employee Personal Devices**

24 In the event a Producing Party claims it does not have possession, custody, or
25 control of an employee personal device containing potentially relevant ESI, the
26 Producing Party shall promptly notify the Receiving Party.

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28

1 **G. Translations.**

2 To the extent a Producing Party produces documents created in a foreign
3 language, the Producing Party will produce any translations created in the ordinary
4 course of business and of which the Producing Party is aware, provided they are
5 responsive and non-privileged.

6 **H. Data Load Files/Cross-Reference Files.**

7 Fielded data should be exchanged via a document-level-database load file in
8 one of two delimited formats. Either standard Concordance (DAT). All image data
9 should be delivered with a corresponding image load file in one of three formats;
10 standard IPro (LFP), Opticon (OPT). The total number of image files referenced in
11 the image load file should match the total number of images in the production
12 delivery.

13 **I. Deduping Documents, De-NISTing Documents, and Most Inclusive Email**

14 1. Deduping Documents. To the extent exact duplicate documents reside within a
15 Party's ESI, the Producing Party may produce only a single, de-duplicated copy of a
16 responsive document. To the extent a Party de-duplicates its documents, it shall de-
17 deduplicate stand-alone documents or entire document families in their ESI sources by
18 the use of MD5, SHA-1, or SHA256 Hash Values. Where any such documents have
19 attachments, Hash Values must be identical for both the document plus-attachment
20 (including associated Metadata) as well as for any attachment (including associated
21 Metadata) standing alone. Attachments to parent documents may not be deduplicated
22 against a duplicate standalone version of the attachment, and standalone versions of
23 documents may not be suppressed if a duplicate version exists as an attachment.

24 2. A Producing Party may de-duplicate documents across all custodians. This
25 will result in the Producing Party needing to produce only a single copy of responsive
26 Duplicate ESI, provided that the Producing Party populates a metadata field that
27 identifies each custodian who had a copy of the produced document (the "Duplicate
28 Custodian" field).

1 3. The Parties shall de-duplicate stand-alone documents against stand-alone
2 documents and shall de-duplicate top-level email documents against top-level email
3 documents. De-duplication shall not break apart families. Attachments to emails
4 shall not be eliminated from the parent email because they are duplicative of a
5 document or email.

6 4. De-Nisting. Each Party will use its best efforts to filter out common system
7 files and application executable files by using a commercially reasonably hash
8 identification process. Hash values that may be filtered out during this process are
9 located in the National Software Reference Library (“NSRL”) NIST hash set list.
10 System and program files defined on the NIST list need not be processed, reviewed,
11 or produced. The Parties may suppress container files (.ZIP, .PST, .RAR) that do not
12 reflect substantive information prior to production.

13 5. Most Inclusive Email Productions. Email threading analysis may be used to
14 reduce the volume of emails reviewed and produced, provided the Producing Party
15 discloses that it is using e-mail thread analysis. “E-mail thread analysis” means that
16 where multiple email messages are part of a single chain or “thread,” a Party is only
17 required to produce the most inclusive message (“Last In Time E-Mail”) and need
18 not separately produce earlier, less inclusive e-mail messages or “thread members”
19 that are fully contained within the Last In Time E-Mail. An earlier e-mail is fully
20 contained in the Last In Time E-Mail only if the Last In Time E-mail includes all of
21 the prior or lesser-included emails, including attachments and identical senders and
22 recipients, for that branch of the email thread.

23 6. Only email messages for which the parent document and all attachments are
24 contained in the Last In Time Email will be considered less inclusive email messages.
25 For avoidance of doubt, if a thread member contains any additional data that is not
26 contained in the Last In Time E-mail (including without limitation attachments or
27 BCC recipients), it is not a less-inclusive e-mail and must be separately produced.

1 **J. Redactions**

2 1. If a producing party intends to redact material other than content that is
3 attorney-client-privileged, work-product-protected, or personally identifiable
4 information,² the parties shall meet and confer regarding the basis and scope of the
5 redactions. Any redactions shall be clearly indicated on the face of the document,
6 with each redacted portion of the document stating that it has been redacted and the
7 basis for the redaction. If any document is redacted, this should be noted in the
8 “RedactionField” (Y/N), listed in Section E, and the “RedactionBasis” field shall
9 indicate the basis for redaction (e.g., “A/C Privilege”).

10 **K. Third-Party Productions**

11 A Party that issues a non-party subpoena shall include a copy of this
12 Stipulation with the subpoena and state that the Parties in the litigation have
13 requested that non-parties produce documents in accordance with the specifications
14 set forth herein. The issuing Party shall produce a copy to all other Parties of any
15 documents (including ESI and any Metadata) obtained under subpoena to a non-party
16 within 10 business days of receipt of such documents.

17 **L. Production Media**

18 The Parties shall produce documents electronically via a secure File Transfer
19 Protocol (“FTP”) or such other readily accessible computer or electronic media as the
20 parties may agree (the “Production Media”).

21 **M. Compliance And Disputes**

22 The Parties agree to use their best efforts to comply with and resolve any
23 differences concerning compliance with any provision(s) of this ESI Protocol. If a
24 Producing Party identifies a particular circumstance where it cannot comply with this
25 Protocol, such Party shall promptly inform the Receiving Party in writing the

27 ² Any redactions for PII shall be made consistent with Fed. R. Civ. P. 5.2(a), so that it
28 is clear from the face of the document that the redaction has been properly applied.

1 reason(s) for, and circumstances surrounding, the need to vary from this Protocol. In
2 the event that the Parties cannot reach agreement on an appropriate deviation from
3 this Protocol, the matter may be submitted to the Court for determination.

4 **N. Modification**

5 This Protocol may be modified by a Stipulated Order of the Parties or by the
6 Court for good cause shown.

7
8 **STIPULATED AND AGREED TO on June 21, 2023.**

9
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27 *Attorneys for Defendant*

28 *Toyota Motor Sales, U.S.A., Inc.*

ATTESTATION

Pursuant to Local Rule 5-4.3.4(a)(2)(i), the e-filing counsel attests that all other signatories listed, and on whose behalf this filing is jointly submitted, concur in the filing's content, and have authorized the filing.

Dated: June 21, 2023

/s/ Lesley E. Weaver

Lesley E. Weaver

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2 **IT IS SO ORDERED.**
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DATED: 6/21/23

/S/ CHARLES F. EICK

Honorable Charles F. Eick

UNITED STATES MAGISTRATE JUDGE